THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2431 of 1996

Date:14.11.2006

Between:

Shaik Rahman

PETITIONER

AND

The Presiding Officer,
Labour Court-I, Hyderabad and another.

---------RESPONDENTS

ORDER:

This writ petition is filed questioning the award, dated 05.10.993, passed in I.D.No.285 of 1993 on the file of the Labour Court-I, Andhra Pradesh, Hyderabad and consequently directing the second-respondent-Corporation to grant relief of continuity of service, back wages and attendant benefits.

It is the case of the petitioner that he was appointed as a Driver in A.P.S.R.T.C. in the year 1971. While so, he applied for leave from 12.09.1987 to 21.09.1987. Later, after recovery from the sickness, the petitioner reported to duty on 26.03.1988 along with medical fitness certificate. The second respondent has not permitted the petitioner to join duty and thereafter served the order, dated 28.03.1988, removing him from service. The appeal preferred by the petitioner has been rejected. Therefore, he raised a dispute under Section 2A (2) of the Industrial Disputes Act.

The second respondent filed a counter-affidavit in the I.D. stating that as per letter, dated 29.11.1987, the petitioner was informed that he availed ten days leave from 12.09.1987 to 21.09.1987 on the basis of a sick certificate issued by Unani Dispensary Doctor and thereafter he has unauthorizedly absented himself from 22.09.1987. On 02.12.1987, the second respondent, through a letter, directed the petitioner to report to the Chief Medical Officer, A.P.S.R.T.C. Hospital, Tarnaka. But, the same was returned un-served. As the petitioner is

continued to be absent, a charge sheet was issued on 08.01.1988 and the same was also returned un-served. Thereafter, an Enquiry Officer was appointed and he issued a notice to the petitioner, which was also returned un-served. Subsequently, the Enquiry Officer conducted an *ex parte* enquiry and submitted his report, holding that the charges have been proved against the petitioner. Based on the said report, the second respondent removed the petitioner from service.

Before the Labour Court, no oral evidence was adduced by both the parties. However, on behalf of the second respondent, Exs.B-1 to B-16 were marked. After a detailed consideration of the material before it, the Labour Court came to the conclusion that the petitioner absented from service from 22.09.1987 and, therefore, he was removed from service on 22.03.1988. Further, notices sent under Exs.B3 to B10 were returned un-served. Under those circumstances, there was no other go for the management but to remove the petitioner from service. However, the Labour Court found that the removal of the petitioner from service is shockingly disproportionate and it would be sufficient if the petitioner is directed to be reinstated with minimum of pay scale of driver category as a fresh candidate treating the out of service period as not on duty for all purposes. Aggrieved thereby, the present writ petition is filed.

The learned counsel for the petitioner submits that absenteeism of the petitioner from 12.09.1987 to 21.09.1987 is neither willful nor wanton He further contends that the Labour Court having held that the punishment imposed is disproportionate to that of mis-conduct, ought not to have denied the back-wages and continuity of service.

The learned counsel for the respondents supported the award passed by the Labour Court and submitted that no case is made out

warranting interference by this Court under Article 226 of the Constitution of India.

Having perused the impugned award and other material available on record, I am of the opinion that the reason for absence was not properly explained by the petitioner. However, the Labour Court held that the punishment of removal from service is shockingly disproportionate to the misconduct. This is not a case of any misappropriation. This is a simple case of absenteeism.

Therefore, I am of the view that the Labour Court having held that the punishment imposed is disproportionate ought to have passed the award by granting relief of continuity of service and other benefits.

In view of the above, I deem it appropriate to modify the order passed by the Labour Court as under:

"The order of removal of the petitioner from service is set aside and it is directed that the respondents shall reinstate the petitioner with minimum scale of driver with continuity of service, but without back-wages and attendant benefits". In all other respects, the award passed by the Labour Court is upheld.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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14.11.2006

kdl